



**Request for City Council Committee Action
From the City Attorney's Office**

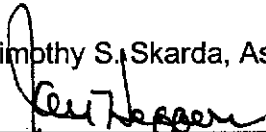
Date: September 25, 2003
To: Ways & Means/Budget Committee
Referral to: None

Subject: Bernard Schmitz v. City of Minneapolis and the MCDA, U. S. District Court file no. 01-1836
MJD/SRN.

Recommendation: That the City Council approve settlement of the lawsuit filed by Bernard Schmitz, United States District Court file no. 01-1836, in the amount of \$3,800.00, payable to Bernard Schmitz and Larry Jennings, his attorney, and authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims, payable from Fund/Org. 6900 150 1500 3800.

Previous Directives: None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- ☐ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☒ Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 3800
- ☐ Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: Build Community

Background/Supporting Information

Bernard Schmitz brought this lawsuit involving the sale of property adjacent to the Plaintiff's property and the granting of a variance to the owners of the property in July, 2001. The Plaintiff initially sought a temporary restraining order that was denied by the court.

The Minneapolis Community Development Agency ("MCDA") owned property located at 2707 8th Street South, adjacent to the Plaintiff's property. The lot was non-buildable according to the zoning code. A separate City

ordinance requires the merger of lots when a property owner owns adjacent lots, one of which is non-buildable. The MCDA owned the lot adjacent to 2707 8th Street, but the adjacent property was subject to a long-term lease. The MCDA sought legal advice concerning the applicability of the merger provisions of the ordinance to 2707 8th Street. It was determined that the merger ordinance was inapplicable because of the encumbrances on the adjacent property from the long term lease. A third party approached the MCDA and offered to purchase 2707 8th Street with the intention of building a single family home. Upon learning of the offer, the Plaintiff submitted a competing bid, seeking to build a three car garage and woodworking shop. The property was sold to the third party for construction of the single family home.

In order for the third party purchaser to build a home on the property a zoning variance was needed to reduce the side yard from 5 feet to 4 feet. A hearing was held on the zoning variance application where approval of the variance was recommended by the Board of Adjustment. The Plaintiff attended the hearing and opposed the variance. The Plaintiff attempted to appeal the recommendation to the City Council by filing a Notice of Exception to the Decision of the Board of Adjustment/City Planning Commission. The Plaintiff failed to include the \$250.00 filing fee with the appeal and the appeal was returned as untimely. The Plaintiff contends that the filing fee was included with the appeal papers and the City refused to accept the check.

The case was scheduled for trial beginning October 14, 2003. A final settlement conference before Magistrate Judge Susan Richard Nelson was held on September 23, 2003. The settlement conference was attended by Council Member Barbara Johnson; Dolly Crowther, representing the MCDA; Andrew Carlson, representing Zoning and Planing; and Assistant City Attorney Timothy Skarda. Prior to the settlement conference, the Plaintiff had not made a settlement demand, but had rejected all attempts to resolve the case. Additionally, the Plaintiff discharged his former attorney and obtained new counsel a week before the conference. The Plaintiff initially demanded \$7,500.00 and the granting of a variance allowing him to erect a 6 foot fence adjacent and within 4 feet of the home buildt at 2707 8th Street. A proposed settlement was reached in the amount of \$3,800.00, including all claims for attorney's fees and costs. We estimate, based on the number of hours spend defending the case, that the Plaintiff may have incurred as much as \$13,500.00 in attorney's fees. The proposed settlement does not obligate the City to grant a variance for the building of a fence by the Plaintiff. Any fence contemplated by the Plaintiff must be in compliance with existing legal requirements.

The parties involved in the settlement conference believe that the proposed settlement is in the best interests of the City of Minneapolis and jointly recommend its approval. While it is problematic that the Plaintiff would be able to prevail on causes of action asserted that would allow him to recover attorney's fees; it is also clear that the assertion regarding the delivery and refusal to accept the \$250.00 appeal check would survive motions to dismiss and require a jury trial. The possibility also exists that the federal court could dismiss the civil rights allegations and decline to exercise jurisdiction on the variance appeal issue, requiring a new and separate lawsuit in the state courts. We believe that the proposed settlement is favorable for the City of Minneapolis and the MCDA, especially considering potential claims for attorney's fees and costs; the fact that separate state court litigation can be avoided; and expense to the City of several days of trial in federal court. We believe that the proposed settlement fairly evaluated the risks posed at trial and the cost of any potential negative verdict.